IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

Crl.Rev.Pet.No. 122 of 1999(A)

CRA.31/1998 of ADDL.SESSIONS COURT,-I, MAVELIKKARA
CC.719/1995 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHENGANNUR

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REVN. PETITIONER: APPELLANT/ACCUSED

MRS.CHINNAMMA BABY, PUTHENPURACKAL VEEDU
KIZHAKKEVAZHI MURI, THRIPPURUNTHURA VILLAGE
MAVELIKKARA TALUK.

BY ADV. SRI.O.V.MANIPRASAD
SRI.M.P.PRABHANANDAN

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA (CRIME NO.249/95-CIRCLE INSPECTOR OF EXCISE, CHENGANNUR RANGE) REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.C.M.KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/03/2007, ALONG WITH CRRC NO.1 OF 1999 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.P.No.122 of 1999

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Crl.R.C.No.1/99

Dated this the 15th day of March, 2007

ORDER

The revision petitioner is the accused who stands convicted for the offence under Section 55(a) of the Abkari Act and sentenced to pay a fine of Rs.25,000/- and in default, to undergo simple imprisonment for three months.

2. Crl.R.C.1/99 was suo-moto taken by this court as a mandatory imprisonment as provided by the statute was not imposed.

3. The prosecution case is that on 28.8.1995 at 1 p.m., the preventive officer and patrol party of Excise Circle Inspector on search of the house of the accused detected one litre of illicit arrack kept in a plastic container. The contention of the counsel for the revision petitioner is that there is inordinate delay in producing the contraband before the court as well as in further forwarding the sample to the chemical analyst. It is contended that there is no evidence also as to when and who drew the

sample and there is no evidence as to the ownership of the house. The evidence adduced in the matter consisted of the testimony of PW's 1 to 5 of whom PW's 1 to 4 are the witnesses to the detection and recovery. PW1 and 2 are the preventive officer and excise guard who have testified as to the incident and PW5 is the excise officer who submitted the charge sheet. It is seen that on verification of the exhibits produced that the contraband was produced before the court only on 21.11.1995 i.e., about one month after the detection and the sample reached the analyst on 15.6.1996 i.e., after about 10 months after the date of detection. Ext.P2 seizure mahazar is silent about the sampling. In the above mahazar, it is not mentioned anything with respect to the identity of the house or as to the ownership of the house. No evidence has been adduced as to whether the accused owned the particular house. There is no house number or anything mentioned in the seizure mahazar. In view of the above circumstances, it cannot be held that the prosecution has proved the indictment beyond reasonable doubt. In the circumstance, the conviction and sentence imposed by the court

below is set aside.

4. In the circumstances, the reference Crl.R.C.1/99 is closed. The accused stands acquitted.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl